

COBB COUNTY DELEGATION

OPPOSES FRANK PETITION

Citizens Tell
Commission They
Think Law Should Take
Its Course

Pursuant to a meeting held Monday night in Marietta, a Delegation of thirty or more Cobb County Citizens Tuesday morning appeared before the State Prison Commission and filed a protest against the Commutation of Leo M. Frank's Death Sentence to Life Imprisonment.

Among the prominent Members of the Delegation were the following:

Herbert Clay, Solicitor General of the Blue Ridge Circuit; J.T. Dorsey and Fred Morris, Representatives-Elect from Cobb County to the Legislature; M.M. Sessions, President of the Sessions Trust Company; R.H. Hill, President of the Merchants and Farmers' Bank; Gordon B. Gann, Attorney; J.E. Dobbs, Clerk of Cobb County Superior Court; W.J. Fry and J.A. Bishop, former Sheriffs of Cobb County; R.G. Brumby, President of Marietta Chair Company; W.N. Gantt, Farmer and Banker; P.F. Knox, Elmer Phagan, uncle of Mary Phagan.

Herbert Clay made the first speech. He said:

"Gentlemen of the Commission, I am not here in my official capacity as Solicitor-General of the Blue Ridge Circuit but come as a Private Citizen representing practically the entire population of Cobb County to protest against the setting aside of the verdict of the Courts in the Case of Leo M. Frank.

"We are not bloodthirsty men. We are simply Citizens interested in the enforcement of the Law. We are doubly interested in the enforcement of the Law in this Case because Mary Phagan was a Cobb County girl, born there and raised there, and her grandfather was as good a Citizen as the County ever had."

"We think in this Case the Law should take its course. As we understand the Customs controlling this Commission, it is usual for the Judge, the Solicitor and the twelve Jurors to join in the Application for a Commutation of Sentence. Without these recommendations in this Case, we think the Commission should not interfere."

“Something has been said about prejudice and an unfair trial. We believe the evidence shows this man guilty. The Jury has said so. The Courts have said so. If you are going to commute this Sentence, Capital Punishment might as well be abolished. If the extreme penalty ever should be enforced, it is in this Case.”

“We come before you, representing people who believe in the enforcement of Law, and we would be lax in our duty as Citizens if we failed to do everything in our power to that end.”

“People outside of Georgia who have read biased, I might say subsidized, accounts, of this Case, have been urging you to commute this Sentence. Because of that Fact, the people of Cobb County in mass meeting assembled last night adopted these Resolutions.”

Here Mr. Clay read the Resolutions adopted by the mass meeting, which urged the Prison Commission and the Governor to let the Jury’s verdict in the Frank Case stand.

In conclusion, Mr. Clay said: “The people of Cobb County leave this matter in your hands, confident you will stand for the enforcement of Law as it is administered in Fulton County and the State of Georgia.”

The next Speaker for the Delegation was Fred Morris, Representative-Elect from Cobb County to the Legislature. Mr. Morris said:

“The people of Cobb County want to see the Law enforced impartially on the rich and poor alike. It is unpleasant to come before you asking that a man be hanged, but we feel it is our duty as Citizens. If Leo M. Frank is not guilty of the murder of Mary Phagan, he should be set free. If he is guilty, he should be hanged. There is no ground in this Case on which a Commutation of Sentence can be asked.”

Here Judge T.E. Patterson, of the Prison Commission, interrupted Mr. Morris and said:

“What we are seeking to do is to arrive at a just conclusion and your Statement is interesting. Now, Judge Roan in his letter says his mind was uncertain. He took the position that a man ought not to be hanged unless the Jury, the Judge and the Governor were satisfied of the man’s guilt. Judge Roan said he was not satisfied.”

MORRIS’ REPLY.

Mr. Morris said:

“The letter was published after that good man’s death. I have always felt that if he believed Frank should have had a new trial, he would have granted it.”

Judge Patterson:

“But Judge Roan said it was possible that he showed undue deference to the verdict of the Jury.”

Mr. Morris:

“But he doesn’t express anything new in his letter.”

Judge Patterson:

“Yes, he does—a doubt as to his own action. Before his doubt was as to the correctness of the Jury’s verdict. In the McNaughton Case, there was not a reasonable doubt but only an element of doubt. So we recommended a Commutation.”

The third and last Speaker for the Delegation was John T. Dorsey, Representative-Elect from Cobb County to the Legislature. He said:

“We come before you, representing 99 per cent of the people of Cobb County. From them we bear greetings and a message.”

“Judge Roan’s letter yesterday was characterized by Mr. Howard as a ‘voice from the tomb. We bring another voice from the tomb—the tomb of W.J. Phagan, Mary Phagan’s grandfather, a noble Citizen who went to his Grave with his mind fully made up as to the guilt of Leo M. Frank.”

“As we see it, no one has asked for mercy in this Case. No man would have the nerve and gall to stand before you and ask for mercy in the event Leo M. Frank is guilty. So, the only Argument advanced, as I see it, is that he did not have a fair trial, and that there is a doubt as to his guilt.”

“But Judge Roan said he had a fair trial and denied him a new one. The Supreme Court of Georgia said he had a fair trial and denied him a new one. Judge Ben Hill said he had a fair trial, and the Supreme Court sustained him. Finally the United States Supreme Court said he had a fair trial and declined to interfere.”

“So I imagine there is no further room for Argument on this point. It is true two Justices dissented, but it is very rare to get four Lawyers to agree, much less six.”

JUDGE NOT JURY.

“It has been argued that Judge Roan had a doubt. But the Judge under our System of the Administration of Law does not have to be convinced. The Judge is there to see that the man on trial has a fair and Legal Trial. He is not a component part of the Jury. If he were, he should retire with the Jury and assist as foreman in the making up of their verdict.”

“I see Judge Powell says Judge Roan was ‘not himself’ after the trial. That being the case I don’t see why importance should be attached to his letter. There is not a word here from the Solicitor or the Jury in Frank’s behalf.”

“They say Cobb County is a County of politics, and we do differ on political questions. But we got together one time and that was last night. There was not a dissenting voice among those Law-abiding Citizens. We feel that Frank has run his course in the Courts. We believe it would be setting a dangerous precedent in Georgia for you to commute his Sentence on account of a Nation’s interest.”

“There were good men here yesterday from over the Country who urged you to commute the Sentence. But the nation has been inflamed by headlines saying ‘an innocent man will be murdered unless we interfere.’ It is an easy matter with such headlines to get countless Petitions. We do not believe the opinions of these people who know nothing of the merits of the Case should affect the Administration of Law in Georgia.”

ASKS DIVINE GUIDANCE.

At the conclusion of Mr. Dorsey’s speech, Mr. Clay thanked the Commission and said this was all they had to say.

Thereupon Chairman R.E. Davison, of the Commission, said:

“Yesterday, we extended an invitation to anyone desiring to speak in opposition to this Application for Commutation of Sentence. We want all the light possible in this Case. There is no member of this Commission, but what wants to do right. This matter involves the most prayerful consideration. God in heaven knows that every night since this Case has been before the Commission, I have gone to Him on my knees and asked for guidance.”

“It should be understood that this Commission does not confine itself to the recommendation of Judges and Solicitors. The action of this Commission is not necessarily governed by such recommendations or the lack of them.”

“There have been numerous times when the Commission allowed a condemned man to be hanged, although the Judges and Solicitors recommended a Commutation of Sentence, and likewise the Commission has in other Cases recommended Commutation when there was no request from the Judges and Solicitors.”

“I wish it understood by the people of Cobb County and over the State that the members of this Commission are unbiased and have no prejudices in this Case. We are, as it were, between two millstones, and we are being ground by both.”

“The people may rest assured, however, that whatever this Commission does will be done in thorough accordance with the dictates of the conscience and Judgment of the members, after the most profound consideration.”

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**NO FRANK
DECISION**

FOR A WEEK, AT LEAST

Prison Commission Has Great

Mass of Petitions and Opinions to Consider

The State Prison Commission will probably take at least a week to consider Leo M. Frank's Application for Commutation of Sentence from Death to Life Imprisonment.

Chairman R.E. Davison said Tuesday it was impossible to forecast exactly how much time would be required by Frank's Lawyers in support of their Plea.

All of the evidence, he said, will be given careful consideration. The Petitions from people in Georgia and other States urging Commutation, and the letters from Lawyers in this and other States laying stress upon the doubt of Frank's guilt, the various analyses of this and that testimony prepared by men who believe in Frank's innocence, the dissenting opinions of the State

and United States Supreme Court Justices, the letter of Judge Roan (now dead) declaring Frank's sentence should be commuted—all of these and more the Commission must review before making its recommendation. Therefore, Chairman Davison expects it will take a week at the very least.

“Whatever recommendation the Commission makes will be in accordance with its Judgment and its conscience,” said Chairman Davison.”

Meanwhile, he added, the Commission will not close its door against anyone who may desire to be heard either for or against Frank's Petition, but if any such come forward the Commission will give them respectful attention.

At the afternoon Session Monday, brief Statements, urging Clemency were made by ex-Governor Eugene N. Foss, of Massachusetts, and Mayor W.F. Dorsey, of Athens, Ga. Letters were read from Miss Louise A. Bane, of Athens; Miss Mildred Rutherford, the Athens Educator; Captain James W. English, of Atlanta; former Justice R.J. Pottle, of the Court of Appeals, and R.T. Roan, brother of Judge Roan.

A Committee of Atlanta Ministers consisting of Dr. John E. White, Dr. C.B. Wilmer, Dr. R.O. Flinn, and Mr. Woods White, presented a Petition signed by a number of Atlanta Ministers urging a Commutation.

Joseph M. O'Connor, Chief Justice of the Criminal Branch of Cook County Superior Court, was the spokesman for a Delegation from Chicago, Ill. Judge O'Connor said the Committee also brought Petitions from Iowa, Wisconsin, Illinois, Idaho, Montana, Wyoming, Kentucky, Washington, California, Michigan, Louisiana and Texas. He said that 500,000 names were signed to these Petitions.

T.N. Higginbotham, Director of the Marshal Field stores, a Capitalist and Philanthropist, also spoke briefly, as did Mrs. M. Delaney Fisher and W.L. Bauer.

A number of letters from prominent Georgia Attorneys were read by Mr. Howard and Petitions asked Clemency were presented from the following Georgia towns:

Baxley, Bainbridge, Athens, Sylvester, Arlington, Americus, Barnesville, Bishop, Blakley, Brinson, Brunswick, Buford, Butler, Calhoun, Camilla, Canton, Cannon, Cartersville, Carrollton, Clarkston, Claxton, Cochrane, Columbus, Cordele, Covington, Dalton, Darien, Dawson, Douglas, Dublin, Eastman, Eatonton, Elberton, Forsyth, Fitzgerald, Gainesville, Hampton, Hartwell, Hawkinsville, Hazlehurst, Jackson, Jesup, Jeffersonville, Kingston, Kirkwood, LaGrange, Lincolnnton, Louisville, Macon, Madison, McDonough, Meigs, Milledgeville, Morganton, Monroe, Moultrie, Newnan, Nichols, Roberts, Rome, Savannah, Social Circle, Statenville, Stillmore, Talbotton, Tallapoosa, Tifton, Vienna, Villa Rica, Washington, West Point, Whitesburg, Wrightsville, and a number of others.

Then Attorney Howard made his Argument, which lasted less than thirty minutes. He said:

“The power to Pardon is an act of grace exercised without restraint or limit. No man can say a Pardon shall be granted only in certain Cases. The only restriction on the Pardoning Power is by inference. The Constitution says the Power is to be exercised ‘in the interest of and for the welfare of the Commonwealth.’ That is all.”

Mr. Howard here quoted the Sections of the Constitution dealing with the power, and followed this, with a brief outline of the history of the Prison Commission, down to date.

He laid stress on the Fact that the Pardoning Power is fundamental and organic in the Law of the State, whereas Laws and Court Procedures are only statutory.

“When Statutes conflict with the Constitution, Statutes must yield,” said Attorney Howard.

“No man can say you conflict with the Law when you exercise the Pardoning Power.”

“TO SET ASIDE NO LAW.”

“You are not asked to set aside any Law. You are asked simply to change a verdict which itself might have been rendered by the Jury in either one of three ways.”

“The Jury could have returned a verdict fixing Life Imprisonment as the Penalty. They could have returned a verdict giving the trial Judge the option between a verdict of Life Imprisonment and Death. They could have returned a verdict allowing the trial Judge no option but the Death Penalty. This was the verdict they did return.”

“We are asking you simply to exercise a function which the Jury could have exercised.”

“We believe the evidence we have submitted will at least cause a doubt in your mind as to the guilt of the man who, we say and believe, is innocent.”

“At the trial such a doubt, under the Law, would have acquitted him.”

“If that doubt is on your mind, we ask you simply to change the Sentence.”

“We ask it in the name of mercy based on the doubt inherent in this Case.”

“We ask it in perfect confidence, for the Constitution says we can be given that mercy where it is for the interest of the Commonwealth.”

“We have criticized no one. We have not even invoked the Record of the United States Supreme Court, where the dissenting opinion of two able Justices puts on Eternal Record the atmosphere of that trial.”

“Conley has been believed as against us. We as against him have been disbelieved.”

“Let this white man be pictured before you by the life he has led and the stainless character he has borne.”

“Let Conley be pictured before you in all the depravity of the heart and soul revealed by the Record of his testimony.”

“Conley’s depravity has ruined us—has taken our character. Do not let him take our life.”

“We ask you this, which is less than our right. Give us this right to live and then we shall trust that ultimately the intervention of Divine Providence will strike away the shackles that bind us.”

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**MRS. FUTRELLE
HERE TO**

WRITE OF FRANK CASE

Widow of Famous
Author Will

Write Impressions for
the

Boston Post

Mrs. May Futrelle, widow of Jacques Futrelle, the Novelist and former Atlantian who lost his life in the Titanic disaster, is in Atlanta to write her impressions of the Frank Case for the Boston Post, one of the largest Newspapers in the East, on which she is a Special Writer.

It was her intention, on leaving Boston, on Sunday to attend the Hearing before the Prison Commission of Frank's Application for a Commutation of Sentence, but when she arrived here at 5:30 Monday afternoon, the Hearing was over.

She will spend several days in the City interviewing various persons connected with the Case for the purpose of ascertaining, insofar as may be approximated by this means, the attitude of the public mind.

Mrs. Futrelle is not only a Southerner and a Georgian, but is an Atlantian. Before her marriage to Jacques Futrelle, she was Miss May Peel. Her family still resides here and with them she is visiting while in the City.

She is a loyal Atlantian who has not forgotten the "Atlanta Spirit" during her absence from the City and has many friends who will welcome her back to her girlhood home.

Going from *The Atlanta Journal* to New York, Jacques Futrelle made his mark in the Newspaper world in that City and rapidly forged to the front as a Magazine Writer. At the height of his success, returning from Europe with Mrs. Futrelle aboard the Titanic, he gave up his life along with the other brave men on that ill-fated vessel in order that women and children might be saved.

Before that time, Mrs. Futrelle had done considerable writing and since then has continued this work for various Newspapers and Magazines.
